

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1114, 1121, 1150, and 1180

[STB Ex Parte No. 575 (Sub-No. 1)]

Disclosure of Rail Interchange Commitments

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board is requesting comments on proposed rules to require that parties seeking to exempt, or to invoke class exemptions covering, transactions involving the sale or lease of railroad lines identify provisions in their agreements that restrict the ability of the purchaser or tenant railroad to interchange traffic with rail carriers other than the seller or landlord railroad (interchange commitments). The proposed rules also provide a procedure whereby shippers or other affected parties may obtain access to such provisions. The Board is taking this action to facilitate the case-specific review of the reasonableness of interchange commitments and to facilitate the Board's monitoring of their usage.

DATES: Opening comments may be filed by any interested member of the public by January 2, 2008. Reply comments may be filed by January 22, 2008. Since OMB is required to make a decision concerning the STB's request for approval of this information collection between 30 and 60 days after November 2, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by December 3, 2007.

ADDRESSES: Any comments submitted in this proceeding must refer to STB Ex Parte No. 575 (Sub-No. 1) and may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing must attach a document and otherwise comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format must submit an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

Because all comments will be posted to the Board's website, persons filing them with the Board need not serve them on other participants but must furnish a hard copy on request to any participant. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., Washington, DC 20503, Attention: Desk Officer for STB.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245-0395.

[Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Additional information and background on the proposed regulations, including the basis for the Board's proposed regulations, appear in the decision in Review of Rail Access and Competition Issues – Renewed Petition of the Western Coal Traffic League, STB Ex Parte No. 575, et al., which is being served on the date of publication of this notice, and is available on the Board's website at www.stb.dot.gov.

To purchase a copy of the full decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail asapdc@verizon.net; telephone (202) 306-4004. [Assistance for the hearing impaired is available through FIRS at 1-800-877-8339.]

The proposed collection of information in the proposed revisions to our regulations for exempting the sale or lease of railroad lines is being submitted to the OMB for review as required under the PRA, 44 U.S.C. 3507(d) and OMB regulations at 5 CFR 1320.11. Pursuant to the Paperwork Reduction Act (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board also seeks comments regarding the collection of information that would be required in the proposed revisions to our regulations for exempting the sale or lease of railroad lines. Specifically, the Board seeks comments on: (1) whether the collection of information proposed here is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Information pertinent to these issues is included. Pursuant to the PRA and OMB regulations, the STB is submitting a request to OMB for approval of this information collection. Submit comments on the four questions above to both the STB and OMB.

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act.

DESCRIPTION OF COLLECTION

Title: Contracts to be Submitted When Rail Carriers Seek Exemption to Acquire (Through Purchase or Lease) and/or Operate a Rail Line

OMB Control Number: 2140-XXXX

STB Form Number: None.

Type of Review: New collection.

Respondents: Noncarriers and carriers seeking an exemption to acquire (through purchase or lease) and/or operate a rail line, if the transaction creates an interchange commitment.

Number of Respondents: 65 (potential)

Estimated Time Per Response: less than 15 minutes

Frequency: On occasion.

Total Burden Hours (annually including all respondents): 16 hours.

Total "Non-hour Burden" Cost: None identified.

Needs and Uses: Under 49 U.S.C. 10502, noncarriers and carriers may seek an exemption from the prior approval requirements of sections 10901, 10902, and 11323 to

acquire (through purchase or lease) and operate a rail line. The proposed collection of agreements with interchange commitments is intended to facilitate the Board's monitoring of their usage.

Retention Period: Information in this report will be maintained in the Board's confidential file for 10 years, after which it is transferred to the National Archives.

Small Entities.

The Board certifies that the proposed revisions to our regulations, if adopted, will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulations will not have a significant effect on small entities because they require merely that a party seeking an exemption for the lease or sale of trackage identify the existence of any interchange commitment and give the Board a copy of the document that creates it. The provision of copies of an existing document will involve only limited additional copying expense. Moreover, the regulations will not affect a substantial number of small entities because they will only apply to small railroads that become parties to future line sales or leases that involve interchange commitments.

Board decisions, notices, filings, and hearings transcripts are also available on our website at www.stb.dot.gov.

List of Subjects

49 CFR Part 1114

Administrative practice and procedure.

49 CFR Parts 1121 and 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1180

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 721, 5 U.S.C. 553.

Decided: October 29, 2007.

By the Board, Chariman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams

Secretary

For the reasons set forth in the preamble, parts 1114, 1121, 1150, and 1180, of title 49, chapter X, of the Code of Federal Regulations are proposed to be amended as follows:

PART 1114 -- APPELLATE PROCEDURES

1. The authority citation for part 1114 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

2. Amend § 1114.30 by adding paragraph (d) to read as follows:

§ 1114.30 Production of documents and records and entry upon land for inspection and other purposes.

* * * * *

(d) Agreements Containing Interchange Commitments. In any proceeding involving the reasonableness of provisions related to a rail carrier sale or lease agreement that serve to induce a party to the agreement to interchange traffic with another party to the agreement, rather than with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means, a party to the proceeding may obtain a confidential, complete version of the agreement, with the prior approval of the Board. The party seeking such approval must file an appropriate motion containing a draft protective order and undertaking(s) that will ensure the agreement is kept confidential. The motion seeking approval may be filed at any time after the initial complaint or petition, including

before the answer to the complaint or petition is due. A reply to such a motion must be filed within 10 days thereafter. The motion will be considered by the Board in an expedited manner.

PART 1121 —RAIL EXEMPTION PROCEDURES

3. The authority citation for part 1121 continues to read as follows:

Authority: 49 U.S.C. 10502 and 10704.

4. Amend § 1121.3 by adding paragraph (d) to read as follows:

§ 1121.3 Content.

* * * * *

(d) Transactions Imposing Interchange Commitments. (1) If a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (“interchange commitment”), the following additional information must be provided:

(i) The existence of that provision or agreement and the affected interchange points must be identified; and

(ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to paragraph (d)(1) of this section by filing, and serving upon the petitioner, a “Motion for Access to Confidential Documents,” containing:

(i) An explanation of the party’s need for the information; and

(ii) An appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

PART 1150 --CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE
RAILROAD LINES

5. The authority citation for part 1150 continues to read as follows:

Authority: 49 U.S.C. 721(a), 10502, 10901, and 10902.

6. Amend § 1150.33 by adding paragraph (h) to read as follows:

§ 1150.33 Information to be contained in notice--transactions that involve creation of Class III carriers.

* * * * *

(h) Transactions Imposing Interchange Commitments. (1) If a proposed acquisition or operation of a rail line or change of operators involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or

rental, positive economic inducement, or other means (“interchange commitment”), the following additional information must be provided:

- (i) The existence of that provision or agreement and the affected interchange points must be identified; and
- (ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to paragraph (h)(1) of this section by filing, and serving upon the petitioner, a “Motion for Access to Confidential Documents,” containing:

- (i) An explanation of the party’s need for the information; and
- (ii) An appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

7. Amend § 1150.43 by adding paragraph (h) to read as follows:

§ 1150.43 Information to be contained in notice for small line acquisitions.

* * * * *

(h) Transactions Imposing Interchange Commitments. (1) If a proposed acquisition or operation of a rail line or change of operators involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (“interchange commitment”), the following additional information must be provided:

(i) The existence of that provision or agreement and the affected interchange points must be identified; and

(ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to paragraph (h)(1) of this section by filing, and serving upon the petitioner, a “Motion for Access to Confidential Documents,” containing:

(i) An explanation of the party’s need for the information; and

(ii) An appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

PART 1180 RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION
PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

8. The authority citation for part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–
11325.

9. Amend § 1180.4 by adding paragraph (g)(4) to read as follows:

§ 1180.4 Procedures.

(g) Notice of exemption. * * *

(4) Transactions Imposing Interchange Commitments. (i) If a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (“interchange commitment”), the following additional information must be provided:

(A) The existence of that provision or agreement and the affected interchange points must be identified; and

(B) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(ii) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to § 1180.4(g)(4)(i) of this section by filing, and serving upon the petitioner, a “Motion for Access to Confidential Documents,” containing:

(i) An explanation of the party’s need for the information; and

(ii) An appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.